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AMERICAN DEPORTATION AND EXCLUSION LAWS

*A Report Submitted by Charles Recht, Counsel,
to the N. Y. Bureau of Legal Advice,
January 15, 1919*

James Madison, arguing before the Virginia Assembly in behalf of a resolution condemning the Alien and Sedition Law of 1798 said:

“Could a power be given in terms less definite, less particular, and less precise? To be dangerous to public safety, to be suspected of secret machinations against the government, these can never be mistaken for legal rules or certain definitions It is rightly affirmed, therefore, that the act unites legislative and judicial powers to those of the executive that this union of power subverts the principle of free government And it must be wholly immaterial whether unlimited powers be exercised under the name of unlimited powers, *or be exercised under the name of unlimited means of carrying into execution limited powers.*”

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The emergent nature of the matters discussed in this pamphlet is made abundantly evident by the widely heralded deportation of 54 aliens from the Northwest, discussed in daily papers of February 10th and 11th. An effort will be made in New York to test this action in the courts but in view of the state of the law and the decisions as set forth in this memorandum, its success is very doubtful.

February 11, 1919

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OUR EXCLUSION AND DEPORTATION LAWS

*To the CHAIRMAN AND MEMBERS
of the NEW YORK BUREAU of LEGAL ADVICE.*

LADIES AND GENTLEMEN:—

Pursuant to a resolution passed by the Executive Committee, I herewith submit to you a report on our Deportation and Exclusion Laws.

You of course realize that laws are the mandates of a ruling majority, growing out of economic and social needs, and that the interpretation of the law is often far more drastic than its intent. On the other hand laws are often placed on the statute books and never enforced. We are dealing here however with laws which both in their substance and enforcement are significant because they are loose and indefinite in their provisions and because there is apparent in this time of economic crisis a tendency to apply them to ends never contemplated by their framers. The suppression of "Anarchy" has been the objective of these laws, and Anarchy itself is a relative term. In Czarist Russia to advocate political power for popular assembly was known as anarchy; in Japan to advocate universal suffrage is today loosely known as anarchy; and in the United States to advocate organization of unskilled labor is rapidly coming to mean anarchy, or, to use the popular disparagement, "Bolshevism."

Again we get different conceptions of what constitutes anarchy if we apply the criteria of individuals. Mr. Rocke-

feller, may, for instance, have a different conception of anarchy from Mr. Wilson. And if the conception among leaders differs, what field for divergence must necessarily exist among the less enlightened? You will observe that by the terms of the law itself what constitutes anarchy is left to the interpretation of Immigration Inspectors. These Inspectors, however well intentioned and unprejudiced, are naturally men of limited education and training—civil service officials, on salaries ranging from twelve to eighteen hundred dollars per year. But in point of fact they are susceptible to both prejudice and influence. To some, Mr. Debs will appear an anarchist; to others even an official of the American Federation of Labor, should he chance to fall from Government grace, might come within the category.

I want besides to caution you that we are dealing with a new type of “anarchy” and that we are departing from our old meaning of that term. As I write there lies before me the *New York World* of January 8, 1919. On the first page is a long account headed:

**MEET “RED” PERIL
HERE WITH A PLAN
TO DEPORT ALIENS**

**All Bolsheviks in America Being Listed by
Department of Labor and Justice,
Which See Extent of Danger.**

The extensive article further continues:

“These were the outstanding developments yesterday in connection with the growing Bolshevik menace in the United States:

Announcement was made in Washington that there is a definite plan to round up and deport all the alien “Reds” in the United States and that the Departments of Labor and Justice are co-operating in preparing a list of every person in the country who has been drawn into the Bolshevik movement.” . . .

All this is highly pertinent. We are developing through

the instrumentality of the press a desire to rid ourselves of dissenters and are going to deport them by virtue of the Immigration Law.

The Immigration Law

An excellent review of the history of laws dealing with deportation of aliens is to be found in an able brief of the relator's attorneys in the case of *U. S. ex rel Turner vs. Williams*,¹ decided by the United States Supreme Court in 1904. The case is remarkable in many ways, but especially because the brief was written by the lawyer-poet, Edgar Lee Masters. It is no mere coincidence in the history of our country that the first deportation laws were written into the Alien and Sedition Acts,² for whose repeal James Madison argued. After the repeal of the Law of 1798, which provided mainly for the naturalization of aliens, additional measures were passed in 1799, 1864, 1875, 1882, 1885, 1887, 1891, 1893, 1903, and finally 1907, 1912, 1917, together with an amendment in 1918. These acts demonstrate the growing restriction of immigration commensurate with the economic growth of the country and our protectionist policy.

In our present problem we are mainly concerned with the Act of 1917 and its 1918 amendment insofar as they touch upon the question of deportation. The sections in question, Sections 19, 20 and 28 of the Act of 1917, together with the Amendment of 1918, will be attached to this report as Appendix I.

The Act of 1917 may be summarized as follows:

SECTION 19. Provides for deportation of any alien who was within the excluded class when he entered this country, or

1. *U. S. ex rel Turner vs. Williams*, 194 U. S. 279.

2. It is interesting to note that when Jefferson became President, he ordered the repayment with interest of all fines imposed under these Acts.

who shall be found to advocate the following: destruction of property, or anarchy, or overthrow of the United States Government or of its forms of law, or assassination of public officials; also of any alien who was sentenced to imprisonment for one year or more for a crime involving moral turpitude committed within five years of his arrival, or who is twice sentenced to such term at *any* time after his entry, unless the judge sentencing him does not ask his deportation; also of any alien who was convicted or who admits commission prior to entry of a crime involving moral turpitude.

SECTION 20. Provides that deportation shall be to the country whence the alien came, and if such country refuses his re-entry, then to the country where he resided prior to entering the country from which he entered the United States.

SECTION 28. Any person who assists an alien who advocates anarchy, etc., to enter the U. S. shall be guilty of a felony.

The amendment of October, 1918, provides that anarchists or aliens who advocate the overthrow of the United States Government or of all forms of law; or who disbelieve in all organized government, or who advocate unlawful destruction of property; or who are members of any organization that entertains a belief in the overthrow by force of the Government of the United States or of all forms of law or of an opposition to all organized government; or who advocates the duty or necessity of killing any officers of the Government of the United States or of any other organized government, shall be excluded. Any alien who at any time after entry shall become a member of one of the excluded classes shall be deported irrespective of the time of entry. Attempting to return after deportation is a felony.

In this discussion Chinese exclusion cases have been omitted. These are in a class by themselves, as this country

has always reserved the right to exclude certain types of Asiatics by treaty, law, and precedent. Those sections of the Immigration Law applicable to Asiatics are therefore not considered.

Old Interpretations

Unfortunately, limitation of space forbids even a brief survey of the increasing strictness of the Immigration Law and the growth of power of the Immigration authorities. This power was not suddenly given but grew from enactment to enactment, from precedent to precedent. The following cases, all arising out of the Act before the amendments of 1917 and 1918, illustrate the unlimited possibilities of interpretation:

In *Redfern vs. Halpert*,¹ an alien who had been in the country since childhood, was deported on the ground that since her arrival she had become immoral. Commenting upon the rigor of the law, the Court said:

"It seems to me that no greater hardship could be occasioned than by deporting an alien who had come to this country at a tender age and lived here until after majority. *Deportation in such case is tantamount to exile.*" (Italics ours).

In a case similar to the preceding, viz., *United States ex rel Bosny vs. Williams*,² Judge Holt tried to save a woman from deportation by sustaining the writ of habeas corpus that had been issued in her behalf on the ground that the proceedings were irregular. It is a fact, however, that even after the writ had been sustained, the woman was arrested in court by the authorities and subsequently deported, after being granted the formalities of counsel. Judge Holt, referring to the practice in deportation, **still in force**, states:

"It is of course obvious that such a method of procedure disregards almost every fundamental principle established in England and

1. *Redfern vs. Halpert*, 186 Fed. 150.

2. *U. S. ex rel Bosny vs. Williams*, 185 Fed. 598.

this country for the protection of persons charged with an offense. The person arrested does not necessarily know who instigated the prosecution. He is held in seclusion and is not permitted to consult counsel until he has been finally examined under oath. The whole proceeding is usually substantially in control of one of the inspectors, who acts in it as informer, arresting officer, inquisitor and judge. The Secretary who issues the order of deportation is an administrative officer who sits hundreds of miles away and never sees or hears the person proceeded against or the witnesses. *Aliens if arrested are at least entitled to the rights which such a system accords them; and if they are deprived of any such right, the proceeding is clearly irregular and any order of deportation issued in it invalid.*" (Italics ours).

CANFORD *vs.* WILLIAMS. Another interesting case was that of *Canford vs. Williams*.¹ The relator came to the United States in 1895 and was employed as an art engraver. About 1905 he underwent the amputation of a leg. The operation cost about \$1500 and left him penniless. In 1910 he went to Italy to see his mother, and, attempting to land in the United States upon his return, was detained. He was at that time sixty years of age; he had been sixteen years in this country; he was willing to give bond; and his children some of whom were native born, offered to guarantee his maintenance. Judge Holt, who passed upon this case also, called attention to the alien's misfortune and his age, and gave it as his opinion that his exclusion was a cruel injustice, but stated that the court was powerless to interfere so long as the proceedings were regular. The court added, however, that it hoped the Immigration Department would reconsider its decision and not compel the alien to pass his last years in a distant land away from his wife and children and exiled from the country where he had led a blameless life.

1. U. S. ex rel Canford vs. Williams, 186 Fed. 354.

Recent Cases

When we realize that the most recent amendment to the law was passed as late as three months ago (October 1918), we can see why there are as yet no reported cases in the Courts. But cases have arisen, the number of which can only be got from the files of the Immigration Department. Of the following cited, two were cases where the aliens were held in custody more than a year and their existence accidentally discovered and reported to the attorney. That there must be other such cases it is safe to surmise.

JOSEPH KOMES. In his affidavit for a writ of habeas corpus, Joseph Komes, one of the aliens, says:

"On the 25th day of January, 1918, an Immigration Inspector came to the County Jail where he was asked some questions by the said Immigration Inspector. That during the entire examination the said sheriff stood by, standing over the relator in such a threatening manner, so that the relator was in constant fear of further assault and did not feel free to answer questions as he would otherwise have answered them. The said Inspector asked relator if he did not say that the marshals and judges should be shot, to which he replied in the negative. The relator was also asked whether he was a member of the I. W. W. and whether they would give him a lawyer. Relator, at first, fearing the sheriff, said that he did not, but later stated to the Immigration Inspector, that he did want counsel. The Immigration Inspector thereupon stated to the sheriff in the presence of the relator that opportunity must be given relator to obtain counsel.

Shortly after said examination, the said sheriff came to the cell in which relator was imprisoned and told him to pull out the mattress. While the relator was doing so, the sheriff approached the relator and struck him a wild, stinging blow upon the side of the head, saying at the same time "What the hell do you want a lawyer for! I will kill you before you get out of here." That this assault and statement by the said sheriff was witnessed by a prisoner whose first name is Pete, and who is under charges for carrying a gun without a license.

The Immigration Inspector came a second time, in the month of

February, 1918, and asked some further questions. *At that time relator was asked no questions with respect to being an anarchist or believing in anarchy.*" (Italics ours).

The Department of Immigration made a return to the writ, the return consisting of a transcript of the proceedings which took place in Hurley, Wisconsin. The Immigration Inspector, who also acted as inquisitor and judicial officer, made the findings and reported to Washington. It should be noted that he acted as his own stenographer and had ample opportunity to correct any irregularities before he transcribed them. Nevertheless, the strongest testimony against Komes were the statements of the Sheriff and Chief of Police of Hurley, Wisconsin, regarding his abuse of the country and flag and his assertion that judges and officials should be blown up, also that his friends would blow up the jail if they knew of his plight. Komes admits intoxication at the time of his arrest and consequent confusion as to what occurred. He specifically denies, however, the charge of violent intent toward officials, and his testimony on his beliefs when sober is as follows:

Q. Do you believe in killing officers?

A. No.

Q. Do you believe the President of the United States should be assassinated?

A. I like the President all right.

Q. Do you believe in destroying property?

A. No, I never did anything like that in my life.

Q. So when you said—if you did say—that you “would fight the United States forever; to hell with the United States,” you were just joking—you didn’t mean it?

A. No, sir, when my time came to fight I will fight for this country and the French. I don’t believe in the Kaiser.

The best proof, however, of the weakness of the case is the fact that when it came up for argument before Judge

Learned Hand, the Immigration Department agreed to cancel the warrant of arrest and deportation. On January 10, 1919, a cold winter day, Komes was released from Ellis Island, clad in scanty summer apparel, without a vest or collar, and thus after being imprisoned more than one year was set adrift in the city of New York, penniless and without a job.

JOHN MEEHAN. John Meehan was arrested in Everett, Washington, on May 21, 1917, for a violation of some local anti-billboard act. It was found that he was a member of the I. W. W. and he was ordered deported to England, from which country he came **twenty-five years ago**. During the entire time of his incarceration, namely from May, 1917, to December, 1918, he was given no change of clothing except two sets of underwear, a blue shirt without collar, and a badly worn shirt and pair of trousers. He had no money and had to borrow stamps from his fellow-prisoners to write to his friends. In December he was deported to England—hatless, penniless, and with insufficient clothing. He has neither kith nor kin in England, and what will happen to him upon his arrival there is easy to surmise, especially if we consider the economic condition of the country during this period of reconstruction. As Appendix II and IIa, to this report, I submit copies of letters sent by Mr. Meehan to Mr. McKee, the Deportation Officer at Ellis Island, and to myself.

FRANK R. LOPEZ. Another instance of the misapplication of the Act is the case of the Spaniard, Frank R. Lopez, who was arrested in Boston, charged with "anarchy," ordered deported and is now at Ellis Island, pending an appeal in his case to the Circuit Court which is to pass on the question of law. There is no claim whatsoever that Lopez is a violent or criminal anarchist. He described himself as a "philosophical anarchist" and it is admitted that he is a member of the American Federa-

tion of Labor; that he owns his own home in East Dedham, Mass.; that he is married, has a boy ten years of age, has been in this country seventeen years; and has always been a law-abiding citizen. The following quotations at page 3 from the record on appeal are instructive:

- “Q. What are their ideas (referring to anarchists)?
A. Education of children. Libertarian ideas.
Q. Do you believe in or advocate the overthrow by violence or force the Government of the United States?
A. No, sir.
Q. Any other Government, Spanish or Italian or Mexican?
A. No, sir, our ideals are founded on education.
Q. What are your ideals?
A. Free thinking.
Q. Don't you believe in the power of authority?
A. What do you mean?
Q. Organized government. Don't you think that if the President gives an order when Congress empowers him it should be obeyed?
A. Yes, the orders should be obeyed.
Q. Do you believe in the propriety of assassination of public officials of the United States or any other government?
A. No, sir. Not only officials but of nobody. Everybody has a right to live.
Q. Do you believe in anarchy?
A. What do you mean by anarchy?
Q. Well, it would be anarchy to fight against the laws of the United States; tear down buildings, blow them up.
A. Anything else? I believe in anarchy but it is not in the way you explain it or the way the newspapers say anarchy is. Anarchy the way the newspapers explain it, assassinating women and children, dropping bombs, or anything like that. I don't believe in that. But I do believe in teaching, educating and telling the people how to better their conditions. If you mean that I am proud of being an anarchist. I am against killing and against destruction. We are to construct.

- Q. How are you going to proceed to do this?
- A. We are not going to force our ideals on anybody's mind. We have conferences; we have lectures. The doors are open and everybody is welcome.
- Q. You try to get people through advertising means?
- A. Yes, for educational purposes.
- Q. For the educational purposes of teaching them anarchy?
- A. To teach them anarchy the way we understand it but not the way you understand it. The way many writers understand it.
- Q. What writers?
- A. Tolstoi, Marx, Ferrer, Zola, Kropotkin, and many others."

At page 4:

- Q. Here is a *Cultura Obrera* of February 2, 1918. Just glance over it and tell me if you believe in all that?
- A. I read it long ago.
- Q. Do you believe in the sentiments expressed therein?
- A. I am not satisfied in part. I am not sympathizing with them in that.
- Q. Is that known as an anarchistic paper?
- A. No, sir.
- Q. What kind of a paper is it?
- A. Labor paper. *Periodico Obrero* means labor paper. Education, Organization and Emancipation.
- Q. Emancipation from what?
- A. I suppose you know what emancipation means? Freedom.
- Q. Freedom of what?
- A. Freedom of slavery.
- Q. There is no slavery now. What do you mean? There is no slavery going on these days?
- A. If there is no slavery here there may be slavery in another part of the world."

At page 7:

- Q. What does he mean by working for the cause in Cuba?
- A. He was interested in labor movements. What you call today Anarchy is real Socialism. Socialism of a few years ago.
- Q. You hear people say that they are philosophical anarchists. What do they mean by that?

- A. That is real anarchy. Not the anarchy the way you explain it as throwing bombs. Philosophy of anarchism is real socialism. These papers are sold on the news-stands in South America and the boys sell them on the street morning and evening and nobody says anything about it. They don't tell people to kill anybody or to destroy fields.

Lopez himself summed up his own case at the hearing before the Immigration Inspector. The last question he was asked was:

"Q. If you are ordered deported do you want to be separated from your wife and boy or would you desire to have them go with you to Spain?

- A. It's up to the Government; I think it is an injustice; I have done nothing wrong; I call it an injustice; *if a man is going to be punished for his thoughts and his ideas it is an injustice.*" (Italics ours).

This case was argued at length before Judge Knox and brief submitted. Judge Knox rendered an opinion, which is attached to this report as Appendix III.

Difficulty in Reaching Prisoners

The general public is under the impression that the writ of habeas corpus is always an efficacious remedy. Unfortunately this ancient Anglo-Saxon right has lost almost all of its liberating magic. If officials were really interested in protecting prisoners in their rights their course would be a comparatively easy one. Unfortunately the reverse is the case. The Port of New York (Ellis Island), for instance, under the guise of protecting immigrants against unscrupulous lawyers, debars attorneys and permits no one to enter without a pass. In a certain case the subordinates placed so many obstacles in the way of the attorney in his effort to get the petition for the writ signed

by the prisoner that his representative was obliged to carry it to the prisoner smuggled in his socks!

But it may be claimed that the attorney can sign the application for the writ himself and avoid these difficulties. That such procedure is not practicable may be seen from the experience of my colleague, Mr. Walter Nelles, Counsel for the National Civil Liberties Bureau.

Acting on telegraphic instructions from Spokane, Wash., Mr. Nelles applied for a writ of habeas corpus to prevent the deportation of six Scandinavians on the ground that they had not had a fair hearing and that there had been no evidence to sustain the charges against them. He signed the application for the writ himself because of the difficulties in the way of communicating with his clients. The prisoners, who had been held incommunicado, did not know that their friends in Spokane had retained a lawyer to protect them. The first time the attorney saw his clients was when they were produced before Judge Augustus N. Hand, in the Federal Court in New York. They were asked if they knew Mr. Nelles, to which they of course replied in the negative. The lawyer offered to show the men the telegram he had received from Spokane and to ask them if they approved the retainer. To this the Assistant United States Attorney objected.

"I shall sustain the objection," ruled the Judge, "I am not going to allow attorneys to be employed by ratification afterwards."

The proceedings were then dismissed on the ground that the attorney had no right to represent the men and the aliens were returned to Ellis Island and deported to Sweden. The following facts were brought out in court in relation to the "due process of law" at the hearing in the state of Washington:

Q. Did you have a hearing before the Commissioner of Immigration in Washington?

- A. Yes, we had a kind of a hearing there.
- Q. Did you ask for a lawyer.
- A. I asked to have a chance to get into communication with an attorney, he told us we could, but he never gave us a chance to do it.
- Q. What do you mean by that?
- A. Well, they threw us in the Black Hole until the 22nd of April and took us out and gave us a hearing."

These questions were addressed to David E. Johnson, one of the aliens. There was no inquiry into the merits of this case but the U. S. Attorney privately showed the Judge various documents, one being a radical looking pamphlet with red covers. The statements made to the Judge by the attorney, Mr. Nelles states, were inaudible and the pamphlets were not made a part of the record. The names of the deported men are: David E. Johnson, Henning Anderson, Lars Anderson, Edwin Berg, Charles Spanberg and Nels Madison. Some of them had been in this country as long as **fifteen years**.

Seattle Cases

The National Civil Liberties Bureau reports the cases of the following aliens,—Henry W. Watts, Achille Ricci, Bartlomeo Massulo, Vincenzo Zacagnini, Emilio Ghelfi, Ottavio Ponnani, Giuseppe DeMatteis, George Painich, Titinio Dentino, Pietro Belli, Carmello Fillippini, Annidale Sciallo, Giuseppe Bertolotti, Francisco Goggi, all held for deportation in Seattle, Wash., on the ground that they were dangerous anarchists. The hearings of these aliens took place in the months of November and December, 1917, in Seattle, before Immigration Inspectors Fischer and Burford.

The record discloses the following facts. All of these men, Italians except Watts and Painich, were arrested on Department warrants as the result of a raid made on the Circolo

Studi Sociale. The most damaging evidence against them disclosed the following facts: that they subscribed to a paper called "Cronacca Suvversia"; that they sympathized with labor leaders under arrest; that they contributed to the Mooney defense funds and sent contributions to the strikers in the Messaba Range.

While the record does not disclose the nature of the publication it is stated by agents of the Department of Justice that the "Cronacca Suvversia" is a dangerous paper advocating anarchy and sabotage. The record mentions, however, the possession of several publications, but upon inquiry they turn out to be mainly books on health and hygiene. Only two of the aliens were found to be circulating the paper. The others were merely subscribers. It is also true that books dealing with different scientific subjects were found in their homes. These dealt with topics ranging from the Darwinian theory to Socialism and Philosophical Anarchy. But most of these men did not understand the books, never read them, and merely bought them to help the "cause" along. All felt this to be the cause of the worker in his desire to better his condition but their ideas of attaining that end were varied, confused and indefinite. For instance Massulo testified on pages 3 and 4 of his record:

A. The anarchist society is not a society, everybody can be one. Get those papers, read them, if you like them get them again, if you don't like them, don't get them.

Q. Do you believe in anarchy?

A. I don't believe. I am a working man and haven't got to the bottom of the books.

Ghefi, on page 3 of his record, says:

A. Some one showed me the paper and told me that it was a good paper for the working class of men.

A. The first time I bought the paper I read a few of the papers and I did not like it.

Bertollotti is an evolutionist. He makes a special point of correcting the Inspector when the latter mistook him for a fatalist. A poet has been lost to the world in the miner Bertollotti.

Belli testifies on page 12 of his record, in answer to the question, "Now, did you consider it a crime to read the papers," "I do not know; I am reading whatever I understand and whatever pleases, I take notice of; whatever I do not understand I pass it on."

The testimony of George Painich, the Croatian, is interesting because it shows how fast we are losing all distinction between criminal and violent anarchy and the advocacy of political change by lawful means. Painich is a Socialist, not an I. W. W. Asked for his opinions, he stated that he did not believe in sabotage and testified, (page 3), as follows regarding revolutionary means:

I don't believe in revolution today against the government. The workingman has to put in a different system and then he has to put the things through the government."

There is a serious human aspect to these cases. These men had a real stake in this country. Contrary to the more usual type of I. W. W., some of them own their own homes. Nearly all had children born in this country. Their occupations were those of laborers and miners, and their families were of course entirely dependent upon them for support. There is considerable evidence that these men desired American citizenship and were home loving and law abiding persons. Nevertheless, though fathers of families and small property holders, several are described as "persons likely to become a public charge."

The Seattle cases admirably illustrate the injustice possible under the 1917 and 1918 laws. No overt acts were charged in the entire record against any of the aliens. Noteworthy is

the statement of Inspector Fischer recommending the deportation of Henry W. Watts:

"There is no evidence to support this charge as to any individual act of the alien. His beliefs, however, and the order (not specified) of which he is a member and active worker are such as **would make it very probable** that he has been teaching and advocating anything and everything in the interest of himself and this order. He has been publishing a newspaper in Everett, and has been a street speaker and an active organizer for the People's Council. He was posted as to the laws of the United States and was undoubtedly prepared to defend himself on all charges contained in the warrant . . ."

What Is Anarchy?

At this point it may be material to consider what has been held to constitute anarchy by the courts in the past. It will become increasingly important in the immediate future for them to determine whether political beliefs independent of unlawful action will be sufficient to include an alien within the terms of the Exclusion Laws. That the government's intention is to include all aliens familiarly known as "Reds" within the Act and ask for their exclusion, is, as we have seen, being brazenly asserted by the press.

The courts of this State and the United States have definitely held that a person may peacefully advocate a change of government by lawful means and not come within the "Anarchy" laws. Nevertheless, in the first of the cases cited, that of Joseph Komes, Judge Knox, (vide Appendix III to this report), decided contrary to the technical interpretation of the meaning of the word "Anarchist."¹

1. Enc. Brit. Vol. I, 11th Ed. page 917 is illuminating:

"It is important to remember that the term anarchist is inevitably used rather loosely in public in connection with the authors of a certain class of murderous outrages and that the same looseness of definition often applies to the professions of 'anarchism' made by such persons. As stated above, a philosophical anarchist would repudiate the connection. And the general

It is challenging to observe how far we have departed from our traditions as expressed in Congressional debates and decisions, by adopting a policy which in effect bars out and deports all political refugees and forever destroys the much-famed "right of political asylum." When the Immigration Bill of

public view which regards anarchist doctrines indiscriminately is to that extent a confusion of terms."

That the term "anarchist" in its legal usage, contemplates only criminal anarchy is shown by the decision in the case of *Von Gerichten vs. Seitz*, 84 N. Y. Supp. 968, where the complainant charged a slander in that the defendant referred to the plaintiff as an anarchist. The court says:

"The student of social science and systems may discriminate between the mere theorist who propounds doctrines that are regarded by a vast majority of the people as impracticable and demoralizing and the destroyer of government . . . but the law takes cognizance of criminal anarchy only, and that is defined in the section of the Statutes above quoted. There may be, as is urged here, anarchy which is not under the condemnation of the court and with which we have no concern."

The official viewpoint of the Department of Justice is evidenced from the following excerpt of an address on "The Suppression of Anarchy" by Hon. James M. Beck, Attorney General of the United States on January 21, 1902. (Reported American Law Review).

"On the threshold of the discussion it is necessary to define the term 'anarchy.' The word imports nothing more than disbelief in the efficacy of any form of government. The vagaries of the human mind are like the ways of Providence, 'mysterious and past finding out,' and there is unquestionably a class of honest and law-abiding visionaries, who in a nebulous and semi-lucid way, believe that the interest of society would be promoted by the abolition of all government whatever. These doctrinaires do not believe in war, or the taking of human life for any cause whatever. Violence has no part in their propaganda, which is purely educational in character. This class of so-called philosophical anarchists is small in number, and does not ordinarily fall within the commonly accepted definition of the word, which in common speech and to the common understanding is applied to those who seek the abolition of government by violence. To prevent, however, any criticism or question of constitutionality any legislation should preliminarily define anarchy as a movement or conspiracy to subvert and destroy organized government by violent and unlawful means." In Bliss's *ENCYCLOPEDIA OF SOCIAL REFORM* are described the two branches or divisions of Anarchy,—the individualist and the communist.

"The individualist anarchists, though perhaps the fewer in number, are in this country especially, the abler body of thinkers, and carry out to their fullest logical results the principles which a great many individualists accept but do not fully carry out. Individualist anarchists do not believe in the use of force—not because they hold it wrong to use it, but simply because they are aware that the use of force never truly liberates, while their aim is absolute liberty—their motto being 'Liberty, not the daughter but the mother of order.' They start from the philosophy of individual sovereignty and apply it to the problem of social science with relentless logic."

"Anarchist communists, on the other hand, form a wholly different school of thought. They do not believe in government and they do believe in overthrowing it by force."

1903 was up for enactment in the Senate the following debate took place between two Senators. The exclusion clause in question was the following: "Polygamists, anarchists or persons who believe in or advocate the overthrow by force or violence of *any* government, of the Government of the United States, or of *all* governments." (See Congressional Report, Volume 36, Part I, Page 1, 43).

MR. HOAR: If the Senator will allow me to call his attention to it, he certainly, I think, on reflection will not wish to retain the words 'of any government' because there are governments of the world that ought to be overthrown by force or violence. What does the Senator say as to the government of the Moros at this moment?

MR. McCOMAS: I think that remote, insular propositions need not be interpolated in a definition of the propagandist of anarchy by violence.

MR. HOAR: I do not know that I as a member of the Senate of the United States want to particularize *all* the governments. We may be on friendly terms with them; *but there are governments in this world that I, for one, would overthrow by force and violence very quickly if I could.*" (Congressional Record, Volume 36, Part I, Page 44). (Italics ours).

The act subsequently passed and the words "any government" were omitted. Let this be compared with the Amendment of 1918 which provides for the exclusion of aliens, who "advocate the duty, necessity or propriety of the unlawful assaulting or killing of any officer or officers, either of specific individuals or of officers generally *or any other organized government* because of his or their official character."

The Revocation of Naturalization

As Appendix IV there is included in this report a decision rendered by Judge Haight,¹ revoking the naturaliza-

1. U. S. vs. Wusterbarth, 249 Fed. 908. Vide also U. S. vs. Damer, 249 Fed. 989.

tion of a citizen because of fraud. This case attracted considerable attention at the time, but the procedure it illustrates is by no means novel. In 1912 a Western judge in the case of *U. S. vs. Raverat*² revoked the naturalization papers of a man who had become a citizen in 1896 on the ground that the man was not of good moral character when admitted to citizenship and had made the fraudulent statement that he was. These precedents open the door for wholesale revocation of citizenship papers on the theory that the applicants for citizenship fraudulently stated that they were not opposed to organized government. **Thus not only may aliens be deported under our present Deportation Laws but naturalized citizens as well through the revocation of their naturalization.**

It may not be amiss to mention this point the anomalous position of those who declare their intention to become citizens and never complete their naturalization. Not only are they subject to deportation in the same manner as if they had never declared their intention, but when deported may find themselves in a country to which they are strangers for the reason that they have renounced their allegiance to that country. Such aliens, deported to the country of their birth, can be barred by that country as aliens and will consequently be aliens the world over, people without a home, or as the German Municipal law calls them, *Heimatlos*. World outlawry! Is this to be the fate of those who advocate the reform of political institutions and the organization of labor?

It is much to be feared that under the present system the number of persons who will thus lose their citizenship will increase. In his excellent treatise, *DIPLOMATIC PROTECTION OF CITIZENS ABROAD*, Borchard says, on page 591:

“A person in this position cannot call upon the diplomatic pro-

2. *U. S. vs. Raverat*, 222 Fed. 1018.

tection of any state, and it is said that the anomalous situation of a German who by residence abroad for ten years, under the law of June 1, 1870, lost his German nationality, led to the enactment of the new law of 1913. The United States has seemingly lent its aid to the perpetuation of this unfortunate system by certain provisions of the Act of March 2, 1907. For example, the presumption of expatriation on the part of a naturalized citizen by a residence of two years in his native state or five years in any other state, may well leave such a person without any nationality. Less justifiable, however, is the provision of Paragraph 3 according to which 'any American woman who marries a foreigner shall take the nationality of her husband,' apparently regardless of whether his national law so provides. Not only may this provision be unenforceable, but it may easily result in depriving a woman of American citizenship without conferring upon her any other. The rule stated by Field, that 'a person who has ceased to be a member of a nation, without having acquired another national character, is nevertheless deemed to be a member of the nation to which he last belonged, except so far as his rights and duties within its territory, or in relation to such nation, are concerned' can hardly be considered as a recognized rule of international law."

Thus are native American women marrying foreigners also subject to deportation and exclusion. In this connection it is interesting to recall the prediction of Edgar Lee Masters and Clarence S. Darrow, made in the Turner case, in 1903:

"It is only a step from this power to the right to control citizens in their beliefs and speech. Some new sophistication of the Constitution will furnish the reason for reviving the terrors and persecutions of the middle ages. If men can be deported at any time within three years they can be deported within any time whatsoever, be it twenty or forty years. If the sovereign powers of the federal government warrant Congress in excluding an alien for a good reason or a bad reason and for deporting him within any time within three years, he can be deported whenever his proscribed principles, whatever they may be, are discovered by the Federal constabulary. And thus by no stretch of imagination do we see the law develop into an engine of despotism to be used upon citizens of long residence in this country. And if these laws can be

made valid against aliens then **natural born American citizens can likewise be proscribed and outlawed as to every right or privilege coming under the power of the federal government.** The prohibition against *ex post facto* laws will not hinder Congress under such an interpretation of the Constitution from attaching to the laws of naturalization a provision to withdraw citizenship and to deport at any time whatsoever and whensoever the proscribed principles of the unfortunate man are ascertained.”¹

Native Born Citizens of Foreign Parentage

Over and above such patent injustice to admitted aliens, the fact should not be overlooked that it has even become possible to exclude or deport citizens of the United States by merely holding them as aliens and then putting them to proof of their nativity. The Circuit Court of Appeals in the case of *Chin Ah Yoke vs. United States*,² admitted that it was obviously difficult in many cases to produce proof of nativity, and though the proof of the defendants having been born in the United States was quite clear, he was nevertheless deported.

Present Outlook

It is not pertinent to discuss here the propriety or moral right of a nation to exclude aliens. Such a discussion would take us into the field of ethics. The fact is that at the present time Congress has power to decree the exclusion of aliens **forthwith**³ without assignment of cause and without a trial,

1. While the author owes a great deal to the brief of these attorneys, it should be said that the greater part of this report had been written before he secured it through the courtesy of Mr. Theodore Schroeder.

2. *Chin Ah Yoke vs. White*, 246 Fed. 940.

3. The Supreme Court of the United States has held regarding the rights of exclusion (*Nashimaru Eleu vs. U. S.* 142 U. S. 659) what is believed to be a general principle regarding this matter:

“It is an accepted maxim of International Law that every sovereign nation has the power as inherent in sovereignty and essential in self preservation to forbid the entrance of foreigners within its domains or to admit them only

or after a trial so grossly inadequate as to be a mere travesty of justice. Such in fact are most of the hearings before the Immigration Authorities.

On the other hand, we have always had our ardent advocates of a liberal immigration policy, and shall have as long as railroads, mines, wheat belt, and shops are in want of cheap labor. Bank presidents, archbishops, rabbis, professors will all sing praises of the new immigrant and cite the time-worn examples of Carl Schurz, Dr. Jacobi, and others. Reverse the picture, however; begin to organize this cheap labor; teach it to meet the increased cost of living with collective bargaining; then will these eulogists undergo swift metamorphosis and re-appear as "vigilantes," "protective," and "law-and-order" leagues. Propaganda will immediately be set afoot to impress the public with the menace of the foreigner, and the once welcomed immigrant now appears in the daily press as "bomb-thrower," "wheat-burner," "anarchist."

The hysteria soon reaches Congress, and exclusion and deportation of immigrants is the order of the day. We have entered upon a period of reconstruction which will involve the

in such cases and upon such conditions as it may see fit to prescribe."

The Supreme Court has also held to a similar effect as to the rights of expulsion of aliens, in the case of *Fong Yue Ting vs. U. S.* 698, 711.

"The right to exclude or expel aliens or any class of aliens absolutely or upon certain conditions in war or peace is the inherent and inalienable right of every sovereign and independent nation, essential to its safety, its independence and its welfare."

This right however, has been qualified by usages of International Law and Treaties. For instance, in a case in which it was sought to expel an American citizen from a foreign country, the American viewpoint was expressed by Secretary Gresham (in the Wiener case) thus:

"That universal sense of right and justice which suggests that no man should be condemned without a hearing would seem to require that the person singled out for expulsion should as a general rule, first be notified of the charges against him and given an opportunity to refute them. If the case is so urgent and the presence of the foreigner so dangerous to the State that this cannot with safety be done, the expelling Government is under obligation to the Government of the person expelled to explain the grounds of its action, by not only asserting, but proving the existence of facts sufficient to justify the expulsion." Vide also *U. S. vs. Wong Kim Ark*, 169 U. S. 649.

working class in much economic distress. Labor will look to Congress for relief, and Congress will be forced to "do something." Deporting aliens is a measure which at the same time relieves the legislative conscience and places the blame for industrial unrest squarely upon the unpopular wing of the workers. The coming Republican Congress can be expected to increase rather than lessen the drastic tenor of the Immigration Act. At the present time the law in its application resembles the *lettre de cachet* of the Bourbons. It is being used to silence all opposition and to render impotent all those who dissent or object. In view of Judge Haight's decision in New Jersey, it is particularly obnoxious.

Commissioner Caminetti's reputed statement of January 10th, that the Immigration Service "will not arrest, detain or deport anyone merely for membership in the I. W. W." would be more reassuring were it not for the records in some of the cases described above.

The immigrant population here has indubitably done its share of building and improving the conditions of this country. It has done its share of fighting and dying for it—both on battlefields, and in mines and shops. It has therefore as much right to a say-so about the improvement of living conditions in this country as the native population. If the immigrant seems stronger in his protest than the native, it is because his protest is immediately stigmatized as a distinctly foreign one, and also because the immigrants in this land are the poorest working class—the class which does the greatest amount of hard labor and which suffers most from discrimination. The weapons which Congress has placed in the hands of the reactionaries, by the enactment of a law capable of the interpretations which have been placed upon the one in question, will soon stifle all opposition and make every immigrant, whether naturalized or not, insecure in his

position in this country. His political status will be reduced to that of an abject and fearing slave of the Government.

Let us remember one of our earliest immigrants, one who helped to write the Declaration of Independence, who first used the words "United States of America"—Thomas Paine. I do not hesitate a moment to say that under the present system of exclusion and deportation, the author of "Common Sense," the man who helped to cheer and encourage the Revolutionary forces at Valley Forge, would be the first to be branded "Anarchist" and cast off by the very country which he fought so hard and bitterly to establish.

We are about to found a League of Nations on the theory that the peoples of the earth have so much in common that it is impossible to injure one without injuring all. To cast out men and women, whose young and strong years of labor have been freely given to this country and to dump them back into a foreign land whose very tongue they may have forgotten, as a punishment for criticism of our institutions,—is not that a contradiction of the very spirit of such a League?

In submitting this report I can suggest no remedy for the situation except such as may be derived from Congressional action. The Bourbons who have "forgotten nothing, and learned nothing" are again seeking to penalize men by excluding and deporting them merely for their opinions and beliefs in order to stamp out "dissent and similar crimes." I can but hope, however, that the general public, once fully informed about the workings of this law, will demand its immediate restriction or repeal.

Respectfully submitted,
CHARLES RECHT,
Counsel

APPENDIX I

Excerpts from the Immigration Law, bearing on Deportation, together with the Amendment of 1918.

SEC. 19. That at any time within five years after entry, any alien who at the time of entry was a member of one or more of the classes excluded by law; any alien who shall have entered or who shall be found in the United States in violation of this act, or in violation of any other law of the United States; any alien who at any time after entry shall be found advocating or teaching the unlawful destruction of property, or advocating or teaching anarchy, or the overthrow by force or violence of the Government of the United States or of all forms of law or the assassination of public officials; any alien who within five years after entry becomes a public charge from causes not affirmatively shown to have arisen subsequent to landing; except as hereinafter provided, any alien who is hereafter sentenced to imprisonment for a term of one year or more because of conviction in this country of a crime involving moral turpitude, committed within five years after the entry of the alien to the United States, or who is hereafter sentenced more than once to such a term of imprisonment because of conviction in this country of any crime involving moral turpitude, committed at any time after entry; any alien who was convicted, or who admits the commission, prior to entry, of a felony or other crime or misdemeanor involving moral turpitude; *Provided further*, That the provision of this section respecting the deportation of aliens convicted of a crime involving moral turpitude shall not apply to one who has been pardoned, nor shall such deportation be made or directed if the court, or judge thereof, sentencing such alien for such crime shall, at the time of imposing or passing sentence or within thirty days thereafter, due notice having first been given to representatives of the State, make a recommendation to the Secretary of Labor that such alien shall not be deported in pursuance of this act; nor shall any alien convicted as aforesaid be deported until after the termination of his imprisonment: *Provided further*, That the provisions of this section, with the exceptions hereinbefore noted, shall be applicable to the classes of aliens therein mentioned irrespective of the time of their entry into the United States: *Provided further*, That the provisions of this section shall also apply to the cases of aliens who come to the mainland of the United States from the insular possessions thereof: *Provided further*, That any person who shall be arrested under

the provisions of this section, on the ground that he has entered or been found in the United States in violation of any other law thereof which imposes on such person the burden of proving his right to enter or remain, and who shall fail to establish the existence of the right claimed, shall be deported to the place specified in such other law. In every case where any person is ordered deported from the United States under the provisions of this act, or of any law or treaty, the decision of the Secretary of Labor shall be final.

SEC. 20. That the deportation of aliens provided for in this act shall, at the option of the Secretary of Labor, be to the country whence they came or to the foreign port at which such aliens embarked for the United States; or, if such embarkation was for foreign contiguous territory, to the foreign port at which they embarked for such territory; or, if such aliens entered foreign contiguous territory from the United States and later entered the United States, or if such aliens are held by the country from which they entered the United States not to be subjects or citizens of such country, and such country refuses to permit their re-entry, or imposes any condition upon permitting re-entry, then to the country in which they resided prior to entering the country from which they entered the United States.

SEC. 28. That any person who knowingly aids or assists any anarchist or any person who believes in or advocates the overthrow by force or violence of the Government of the United States, or who disbelieves in or is opposed to organized government, or all forms of law, or who advocates the assassination of public officials, or who is a member of or affiliated with any organization entertaining or teaching disbelief in or opposition to organized government, or who advocates or teaches the duty, necessity, or propriety of the unlawful assaulting or killing of any officer or officers, either of specific individuals or of officers generally, of the Government of the United States or of any other organized government, because of his or their official character, to enter the United States, or who connives or conspires with any person or persons to allow, procure, or permit any such anarchist or person aforesaid to enter therein, shall be deemed guilty of a felony, and on conviction thereof shall be punished by a fine of not more than \$5,000 or by imprisonment for not more than five years, or both

Any person who knowingly aids or assists any alien who advocates or teaches the unlawful destruction of property to enter the United States shall be deemed guilty of a misdemeanor and on conviction shall be punished by a fine of not more than \$1,000 or by imprisonment for not more than six months, or by both such fine and imprisonment.

These sections are amplified by Rule 22 of the Immigra-

tion Rules, such rules having by virtue of the law the same effect as the law itself. Sub-division 1, Rule 22, provides:

SUBDIVISION 1. Classes of warrant cases.—All cases in which aliens may be arrested and deported are either stated in detail or mentioned in Section 19. They fall into the following divisions. With respect to each of these divisions the law is retrospective or not and the time within which deportation proceedings may be instituted is limited or not, as indicated below.

(a) Any alien who has entered the United States prior to May 1, 1917, and who at the time of entry was a member of any one of the classes excluded under any provision of the Immigration Act of February 20, 1917; limitation five years; retrospective.

(i) Any alien who may be sentenced to imprisonment for a term of one year or more because of conviction in this country of a crime involving moral turpitude, unless such alien has been pardoned or the court or judge sentencing him has recommended to the department, at the time of imposing sentence or within 30 days thereafter, that he be not deported; limitation—that the crime shall have been committed within five years after entry; retrospective with respect to time of entry, but not retrospective with respect to conviction; deportation shall not occur until termination of imprisonment.

(j) Any alien who may be sentenced more than once to imprisonment for a term of one year or more because of conviction in this country of a crime involving moral turpitude, unless such alien has been pardoned or the court or judge sentencing him has recommended to the department, at the time of imposing sentence or within 30 days thereafter, that he be not deported; no limitation; retrospective with respect to time of entry, but retrospective with respect to conviction; deportation shall not be effected until termination of imprisonment

(s) Any alien who was convicted or who admits the commission prior to entry of a felony or other crime or misdemeanor involving moral turpitude; no limitation; retrospective.

(t) Any alien who shall be found advocating or teaching the unlawful destruction of property; no limitation; retrospective.

(u) Any alien who shall be found advocating or teaching anarchy, or the overthrow by force or violence of the Government of the United States or of all forms of law or the assassination of public officials; no limitation; retrospective.

It must be borne in mind that these sections are supplemented by an amendment passed in October, 1918, which provides as follows:

"BE IT ENACTED BY THE SENATE AND HOUSE OF REPRESENTATIVES OF THE UNITED STATES OF AMERICA IN CONGRESS ASSEMBLED, That aliens who are anarchists; aliens who believe in or advocate the overthrow by force or violence of the Government of the United States or of all forms of law; aliens who disbelieve in or are opposed to all organized government; aliens who advocate or teach the assassination of public officials; aliens who advocate or teach the unlawful destruction of property; aliens who are members of or affiliated with any organization that entertains a belief in, teaches, or advocates the overthrow by force or violence of the Government of the United States or of all forms of law, or that entertains or teaches disbelief in or opposition to all organized government, or that advocates the duty, necessity, or propriety of the unlawful assaulting or killing of any officer or officers, either of specific individuals or of officers generally, of the Government of the United States or of any other organized government, because of his or their official character, or that advocates or teaches the unlawful destruction of property shall be excluded from admission into the United States.

SEC. 2. That any alien who, at any time after entering the United States, is found to have been at the time of entry, or to have become thereafter, a member of any one of the classes of aliens enumerated in Section I of this act, shall, upon the warrant of the Secretary of Labor, be taken into custody and deported in the manner provided in the Immigration Act of February fifth, nineteen hundred and seventeen. The provision of this section shall be applicable to the classes of aliens mentioned in this act irrespective of the time of their entry into the United States.

SEC. 3. That any alien who shall, after he has been excluded and deported or arrested and deported in pursuance of the provisions of this act, thereafter return to or enter the United States or attempt to return to or to enter the United States shall be deemed guilty of a felony, and upon conviction thereof shall be punished by imprisonment for a term of not more than five years; and shall, upon the termination of such imprisonment, be taken into custody, upon the warrant of the Secretary of Labor, and deported in the manner provided in the Immigration Act of February fifth, nineteen hundred and seventeen."

APPENDIX II

Letter of John Meehan to Inspector McKee

Ellis Island, N. Y.,
Dec. 5, 1918.

MR. MCKEE:—

I understand I am to sail for England tomorrow. Would it be too much for me to ask that I be given suitable clothing so that I may leave

as I entered almost a quarter of a century ago? No charity organization donated the clothing I then wore. I have been forced to wear out, in idleness all those I had when arrested almost nineteen months ago. Am I not justified in asking whoever is responsible for the use of this force to furnish me with those things. I *must* have unless I am to be looked on in commiseration and my health menaced. I see clearly what is ahead of me hence this note to you.

YOURS,

JOHN MEEHAN.

Dec. 9th.

Nothing doing here for you, says Mr. McKee, so I leave ragged and bare-headed. I wrote again on the 8th was that censored also? I have been here a year this is the first time I was notified to write on only one side of paper. However, we must take into consideration the fact that the war is over (?) so it is not necessary to save paper to win it.

J. M.

Appendix IIa

Letter of John Meehan to Charles Recht, Attorney

Ellis Island, N. Y.,
Dec. 5, 1918.

MR. CHARLES RECHT,
Dear Sir:—

Received your letter and enclosures. I believe the U. S. has nothing to say of the country, that is, the country to which I am to be deported. It's up to the Canadian Government. Under the circumstances the latter is not justified in prohibiting me landing in that country. However, I hear I am to be shipped Saturday next, being eager to leave this place, drop the hope willingly. Please accept my thanks for going to so much trouble on my account. Had you not come I am sure the powers that be would not have taken action. When you asked for a pass the news was phoned over, and they got down to business at once. Of course this is only surmizing but I think it hits the truth. Thanking you again,

Gratefully yours,

JOHN MEEHAN.

More Power to You!

NOTE:—We endeavored to have Meehan deported to Saskatchewan where he had a brother, instead of to England where he was a total stranger; but the Canadian Government objected. (In Canada it is a crime to belong to the I. W. W. organization).

APPENDIX III

Judge Knox's Decision in the Lopez Case

The traverse herein raises only questions of law and as a consequence the record of the case before me is sufficient for its disposition.

The relator objects to his deportation upon the ground that since he is a "Philosophical anarchist" rather than the type which believe in assassination and other violence for the accomplishment of their ends, he does not come within the class of persons denounced by the Immigration Act of February 5, 1917.

The opportunity is thus afforded me to enter upon an expression of my views as to the varying degrees of anarchy with which society is more or less afflicted. However, I shall refrain and content myself solely with the observation that in my judgment, the very theory of anarchy is opposed to that of organized government. The theory of anarchy and that of government must at all times be in conflict, and I cannot believe that the philosophical anarchist, at least so far as his ultimate purpose is concerned is any less dangerous than is the advocate of violence. Indeed in a sense the insidious character of the teachings of the one is more to be feared than are the teachings, and activities of the other. It may be that I am lacking in liberality of thought, but I am unable to divorce my mind from the idea that the doctrinaire who spreads his doctrine that all forms of government as we know them shall be subverted to a so-called citizenry of the world is an anarchist, and as such comes within both the terms and spirit of the Act of Congress upon the subject, and that such person may lawfully be excluded from the country. I find no merit in the technical objections raised. The conclusion that the relator has been found advocating and teaching anarchy is amply sustained by the record and the writ of habeas corpus will accordingly be dismissed.

JOHN C. KNOX,
U. S. D. J.

December 9, 1918.

APPENDIX IV

Judge Haight's Decision in U. S. vs. Wusterbarth

(District Court, D. New Jersey. May 13, 1918).

HAIGHT, District Judge. This is a proceeding instituted by the United States attorney for this district under section 15 of the Naturalization Act of June 29, 1906 (34 Stat. L. 596, 601, c. 3592 [Comp. St. 1916, §4374]), to cancel a certificate of citizenship granted to Frederick W. Wusterbarth, the respondent, by the court of common pleas of the county of Passaic, in the state of New Jersey, on the ground that it was fraudulently and illegally procured. The certificate was issued on

November 3, 1882; the respondent being a native of Germany and a subject of the German emperor. The fraud alleged is that the respondent declared under oath that he absolutely and entirely renounced and abjured all allegiance and fidelity to any sovereignty, and particularly to the emperor of Germany, whereas in fact he did not do so, but, on the contrary, retained an allegiance to Germany and its ruler. The matter has come on for hearing on the issues raised by the petition of the district attorney (to which were attached affidavits supporting its allegations), and the answer of the respondent. Upon the hearing the government proved, in substance, the following facts, viz.:

Within a few days after the outbreak of the present war between the United States and the German Empire, the respondent was approached by two ladies interested in a local chapter of the American Red Cross, in an effort to induce him to contribute money to that organization, upon which appeal the respondent became angry, and replied in substance that he would not do so; that he would do nothing to injure the country in which he had been born, brought up, and educated. Subsequently, in the month of June following, another woman, who was likewise interested in the same chapter of the American Red Cross, visited him, and asked him to become a member. He angrily refused to do so, stating that he would give no money to send soldiers to the country where he was born and educated, and, in reply to some arguments which the solicitor advanced, stated that she did not know what it meant to be born in a country, and then have men go over and fight against that country. In the month of November, 1917, the respondent was approached by two gentlemen, in an effort to induce him to subscribe to the funds which the Young Men's Christian Association was then raising for war work. At that time he stated he would do nothing to help defeat Germany and in response to a question as to whether he did not want America to win the war he replied that he did not; that he had relatives in Germany. He made the same rejoinder to the question as to whether he did not want the American soldiers in camps and cantonments to be well taken care of; and, in reply to a statement made to him that he was better off than most Americans, he replied that he only came to this country on a vacation or visit

The question, therefore, on which the decision of this case depends, is whether it may be legitimately inferred as a fact, from his

present state of mind, coupled with the circumstances to be hereinafter referred to, that he was of the same mind at the time he took the oath of allegiance and renunciation. In that aspect the case is one of first impression, so far as I am informed or have been able to ascertain. It must be borne in mind that the respondent did not express any dissatisfaction with the aims and purposes of this country in the present war, or with the reasons which had induced Congress to declare war, but that he boldly took the position that he would do nothing to injure the country of his birth, and did not wish this country to win the present war, because of the ties which bound him to Germany. As the years succeeding his naturalization passed, coupled with the fact that he continued to dwell in our midst, associate with our citizens, receive the benefits which this nation and its institutions have conferred upon him, acquire property here, and hold public office (as the proofs show that he did), it is natural to presume that his affection and feeling of loyalty and allegiance to this country would increase, and that any ties which bound him to the country from which he came would correspondingly decrease.

If, therefore, under such circumstances, after 35 years, he now recognizes an allegiance to the sovereignty of his origin, superior to his allegiance to this country, it seems to me that it is not only permissible to infer from that fact, but that the conclusion is irresistible, that at the time he took the oath of renunciation, he did so with a mental reservation as to the country of his birth, and retained towards that country an allegiance which the laws of this country required him to renounce before he could become one of its citizens. Indeed, for the reasons just stated, his allegiance to the former must at that time have been stronger than it is at present. Whatever presumption might otherwise arise in his favor from the apparent fact that during the intervening years he has lived as a good citizen of this country is of no weight, when it is considered that nothing has happened during that time to call forth a manifestation of his reserved allegiance, and that as soon as something did happen—i. e., the war between this country and Germany—he immediately manifested it.

U. S. vs. Wusterbarth, 249 Fed. 908. See also Report of U. S. Attorney General for 1918, pages 39 and 746, where the process is called "*Denaturalization Proceedings*." (sic).

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